Government of Malaysia v Dato' Mahindar Singh

HIGH COURT (KUANTAN) — CIVIL SUIT NO 21-1 OF 1991
ARIFIN ZAKARIA J
15 JULY 1995

Civil Procedure *— Summary judgment — Income tax — Assessment — Suit for payment of income tax — Application to sign final judgment — Whether triable issues may be raised before court — Whether there was inordinate delay in applying for summary judgment — Income Tax Act 1967 s 106(3)*

Limitation *— Income tax — Whether assessment statute-barred — Whether High Court has power to entertain such plea — Income Tax Act 1967 s 91(1) & (3)*

Revenue Law *— Income tax — Summary judgment — Delay in application — Whether delay was inordinate and unreasonable*

Revenue Law *— Income tax — Assessment — Notice of — Whether notices of assessment properly served*

Revenue Law *— Income tax — Payment of tax — Agreement for payment by instalment — Whether such agreement prevailed over certificate issued under s 142 of Income Tax Act 1967 — Income Tax Act 1967 s 142*

The plaintiff, the Government of Malaysia, by writ dated 25 January 1991 claimed against the defendant for the total amount of RM510,913.53 being tax for the years of assessment 1975 to 1985 together with a further increase in the amount due and payable for failure to pay such tax within the stipulated time. The defendant filed his defence and counterclaim on 21 February 1991. The plaintiff served their reply and defence to the counterclaim on 23 August 1991. On 26 August 1991 plaintiff applied for leave of the court to enter final judgment against the defendant under O 14 of the Rules of the High Court 1980 ('the RHC 1980'). In his affidavit in reply, the defendant objected to the plaintiff's application on the ground of delay of the plaintiff in making the O 14 application which was filed some six months after the defendant filed his defence. The defendant contended that the plaintiff had not anywhere in the affidavit in support of this application given any explanation for the said delay. On the merits the defendant submitted that there were a number of triable issues that ought to go for trial, namely (a) whether the notices of assessment were properly served on the defendant (the notices of assessment were addressed to c/o Messrs Coopers & Lybrand Taxation Services Sdn Bhd, PO Box 234, 25720 Kuantan. The defendant contended that the notices of assessment should have been served on Messrs Coopers & Lybrand of 1st Floor, Hock Bee Building, Jalan Besar, Kuantan as stated in his letter (exh MAHS 10); (b) whether part of the plaintiff's claim is time-barred; (c) whether these additional assessments refer to race betting income and as such are not taxable; (d) whether the assessments were illegal,

wrongful and an abuse of the plaintiff's power and that they malicious and done in bad faith; and (e) whether there was an agreement between the plaintiff and the defendant for the settlement of the sum due and payable. The plaintiff applied to have the counterclaim by the defendant struck off on the ground that it was contrary to O 73 r 4(1) of the RHC 1980.

Held, allowing the plaintiff's claim:

(1) Whether the delay may be considered as inordinate or unreasonable so as to bar the plaintiff from making the application under O 14, would depend on the circumstances of the case. Delay, per se, is only one of the factors to be considered in an application under O 14 but delay on its own can never form the basis of a dismissal of such an application. In this case, there had been interlocutory steps taken by the plaintiff during the period of the delay and this coupled with the fact that there had been no allegation of any prejudice to have been done to the defendant, the delay alone would not warrant the dismissal of the plaintiff's application (see p 632D–I); *First Malaysia Finance Bhd v Yeow Bon Chong* (Civil Suit No C 7956 (1985) High Court, Kuala Lumpur (unreported)) and *Comptroller-General of Inland Revenue, Malaysia v Weng Lok Mining Co Ltd* [1969] 2 MLJ 98 followed.

(2) On the issue of the service of notices of assessment, the defendant never at any stage informed the plaintiff that the address used by the plaintiff was wrong or that the notices were sent to the wrong party. The defendant instead appealed against the assessment to special commissioners under s 99 of the Income Tax Act 1967 ('the Act'). The defendant or his tax agent in the circumstances must have been served with the notices of assessment, otherwise how could the defendant have appealed against the same. Therefore, it was not open to the defendant to say that he had not been properly served with the notices of assessment (see p 633C–I).

(3) On the issue of limitation, the High Court has no power to entertain a plea of limitation under s 91(1) and (3) of the Act advanced by a taxpayer. The special commissioners however have such power (see pp 633I–634E); *Kerajaan Malaysia v Dato' Hj Ghani Gilong* [1995] 2 MLJ 119 and *NTS Arumugam Pillai v Government of Malaysia* [1976] 2 MLJ 72 followed.

(4) The issues relating to whether the additional assessments were taxable and whether they were illegal could only be raised before the special commissioners and not before the court in an application for summary judgment under O 14 of the RHC 1980 (see p 634E). Under s 106(3) of the Act, the court is debarred from entertaining any plea which claims that the amount of taxes sought to be recovered is excessive, incorrectly assessed under appeal or incorrectly increased under ss 103(4), (5) or (5A) (see

pp 634G–635B); *Comptroller of Income Tax v A Company Ltd* [1966] 2 MLJ 282 followed. A

(5) The alleged agreement between the plaintiff and defendant for the settlement of the sum due and payable by instalments could not stand in the face of the certificate issued under s 142 of the Act. The said certificate is expressly provided to be sufficient B evidence of the amount of tax due from the defendant and gives the court sufficient authority to give judgment for the amount (see p 635C–D).

(6) The application to strike off the defendant's counterclaim was allowed as the plaintiff's claim in respect of tax due and payable by the defendant was beyond dispute and fell squarely within the C ambit of O 73 r 4(1) of the RHC 1980 (see p 635I).

[Bahasa Malaysia summary

Plaintif, Kerajaan Malayisa, melalui writ bertarikh 25 Januari 1991, D telah menuntut terhadap defendan untuk jumlah sebanyak RM510,913.53 sebagai cukai untuk tahun-tahun taksiran dari 1975 sehingga 1985 bersama-sama dengan tambahan selanjutnya dalam jumlah yang kena dibayar untuk kegagalan membayar cukai tersebut dalam tempoh masa yang ditentukan. Defendan telah memfailkan pembelaan dan tuntutan balas pada 21 Februari 1991. Plaintif telah E menyerahkan jawapan dan pembelaannya kepada tuntutan balas pada 23 Ogos 1991. Pada 26 Ogos 1991, plaintif telah memohon kebenaran mahkamah untuk memasukkan penghakiman muktamad terhadap defendan di bawah A 14 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT 1980'). Dalam afidavit jawapannya, defendan telah membantah terhadap permohonan plaintif atas dasar kelambatan F plaintif dalam membuat permohonan A 14 yang difailkan enam bulan setelah defendan telah memfailkan pembelaannya. Defendan telah berhujah bahawa plaintif telah tidak di mana-mana pun, dalam afidavit menyokong permohonannya, memberikan penjelasan mengenai kelambatan tersebut. Atas meritnya, defendan telah G menghujahkan bahawa terdapat beberapa isu boleh bicara yang patut dibicarakan, iaitu (a) sama ada notis-notis taksiran telah diserahkan dengan wajarnya ke atas defendan (notis-notis taksiran telah dialamatkan kepada d/a Tetuan Coopers & Lybrand Taxation Services Sdn Bhd, Peti Surat 234, 25720, Kuantan. Defendan telah berhujah H bahawa notis-notis taksiran patut diserahkan kepada Tetuan Coopers & Lybrand di Tingkat Pertama, Bangunan Hock Bee, Jalan Besar, Kuantan, seperti yang dinyatakan dalam suratnya (eks MAHS10); (b) sama ada sebahagian daripada tuntutan plaintif telah dihalang oleh batasan masa; (c) sama ada taksiran tambahan itu merujuk kepada pendapatan pertaruhan perlumbaan dan oleh itu tidak boleh I dicukaikan; (d) bahawa taksiran tersebut adalah menyalahi undang-undang, salah dan merupakan penyalahgunaan kuasa plaintif dan bahawa ianya dibuat dengan niat jahat dan secara tidak ikhlas; dan

(e) sama ada terdapat satu perjanjian di antara plaintif dan defendan untuk penyelesaian jumlah tersebut yang kena dibayar. Plaintif telah memohon untuk membatalkan tuntutan balas defendan atas dasar bahawa ianya adalah bercanggahan dengan A 73 k 4(1) KMT 1980.

Diputuskan, membenarkan tuntutan plaintif:

(1) Sama ada kelambatan tersebut boleh dianggap sebagai keterlaluan dan tidak munasabah untuk menghalang plaintif daripada membuat permohonan di bawah A 14, akan bergantung kepada keadaan-keadaan kes. Kelambatan sahaja adalah hanya salah satu daripada faktor-faktor yang harus dipertimbangkan untuk permohonan di bawah A 14 tetapi kelambatan secara sendiri tidak dapat membentuk dasar penolakan permohonan tersebut. Dalam kes ini, terdapat langkah-langkah interlokutori yang diambil oleh plaintif semasa tempoh masa kelambatan tersebut dan ini berserta dengan fakta bahawa tidak terdapat dakwaan prejudis yang telah dilakukan kepada defendan, kelambatan sahaja tidak akan menyebabkan penolakan permohonan plaintif (lihat ms 632D–I); *First Malaysia Finance Bhd v Yeow Bon Chong* (Civil Suit No C 7956 (1985) High Court, Kuala Lumpur (unreported)) dan *Comptroller-General of Inland Revenue, Malaysia v Weng Lok Mining Co Ltd* [1969] 2 MLJ 98 diikut.

(2) Mengenai isu penyerahan notis taksiran, defendan telah tidak, pada mana-mana peringkat pun, memberitahu plaintif bahawa alamat yang digunakan olah plaintif adalah salah dan bahawa notis-notis tersebut telah dihantar kepada pihak yang salah. Padahal, defendan telah merayu terhadap taksiran kepada pesuruhjaya khas di bawah s 99 Akta Cukai Pendapatan 1967 ('Akta tersebut'). Defendan ataupun ejen pencukaiannya dalam keadaan tersebut mesti telah diserahkan dengan notis-notis taksiran, jikalau tidak bagaimanakah defendan dapat merayu tehadap notis-notis tersebut. Maka, ianya tidak terbuka kepada defendan untuk menyatakan bahawa dia telah tidak diserahkan dengan wajarnya dengan notis-notis taksiran (lihat ms 633C–I).

(3) Mengenai isu batasan masa, Mahkamah Tinggi tidak mempunyai kuasa untuk melayan permohonan batasan masa di bawah s 91(1) dan (3) Akta tersebut yang dikemukakan oleh pembayar cukai. Walau bagaimanapun, pesuruhjaya khas mempunyai kuaaa tersebut (lihat ms 633I–634E); *Kerajaan Malaysia v Dato' Hj Ghani Gilong* [1995] 2 MLJ 119 *NTS Arumugam Pillai v Government of Malaysia* [1976] 2 MLJ 72 diikut.

(4) Isu-isu yang berkaitan dengan sama ada taksiran tambahan adalah boleh dicukaikan dan sama ada ianya adalah salah di sisi undang-undang hanya boleh dibangkitkan di hadapan pesuruhjaya khas dan bukannya di hadapan mahkamah dalam permohonan untuk penghakiman ringkas di bawah A 14 KMT 1980 (lihat ms 634E). Di bawah s 106(3) Akta tesebut, mahkamah adalah dihalang

daripada melayan sebarang tuntutan yang menuntut bahawa jumlah cukai yang dituntut adalah keterlaluan, tidak ditaksir dengan betul di bawah rayuan ataupun ditambahkan secara tidak wajar di bawah ss 103(4), (5) ataupun (5A) (lihat ms 634G–635B) *Comptroller of Income Tax v A Company Ltd* [1966] 2 MLJ 282 diikut.

(5) Perjanjian di antara plaintif dan defendan untuk penyelesaian jumlah yang kena dibayar tidak dapat kekal memandangkan perakuan yang diisukan di bawah s 142 Akta tersebut. Adalah jelas diperuntukkan bahawa perakuan tersebut adalah keterangan yang memadai akan jumlah cukai yang kena dibayar dari defendan dan ini memberikan mahkamah kuasa yang mencukupi untuk memberikan penghakiman untuk jumlah tersebut (lihat ms 635C–D).

(6) Permohonan untuk membatalkan tuntutan balas defendan dibenarkan kerana tuntutan plaintif mengenai cukai yang kena dibayar oleh defendan adalah tidak boleh dipertikaikan dan termasuk dalam lingkungan A 73 k 4(1) KMT 1980 (lihat ms 635I).]

Notes

For a case on summary judgment for recovery of tax, see 10 *Mallal's Digest* (4th Ed, 1996 Reissue), para 1899.

For a case on excessive tax recovered, see 10 *Mallal's Digest* (4th Ed, 1996 Reissue), para 1714.

For cases on plea of limitation in relation to assessment for taxation, see 10 *Mallal's Digest* (4th Ed, 1996 Reissue), paras 1685–1691.

Cases referred to

Comptroller of Income Tax v A Company Ltd [1966] 2 MLJ 282

Comptroller-General of Inland Revenue, Malaysia v Weng Lok Mining Co Ltd [1969] 2 MLJ 98

First Malaysia Finance Bhd v Yeow Bon Chong (Civil Suit No C 7956 (1985) High Court, Kuala Lumpur (unreported))

Kerajaan Malaysia v Dato' Hj Ghani Gilong [1995] 2 MLJ 119

NTS Arumugam Pillai v Goverment of Malaysia [1976] 2 MLJ 72

Legislation referred to

Government Proceedings Act 1956 s 42(2)(e)(i)

Income Tax Act 1967 ss 99, 103(1), (4), (5), (5A), 105(2)(c), 106(3), 136(4), 142(2), 145(2)

Rules of the High Court 1980 O 14, O 73 r 4(1)

Kok Keng Fai (Senior Federal Counsel) for the plaintiff.

Dato' Mahindar Singh (Mahindar & Co) in person.

Arifin Zakaria J:

The writ

By writ dated 25 January 1991, the plaintiff, the Government of Malaysia, claims against the defendant the total sum of RM442,349.43 being tax for the years of assessment from 1975 to 1985. Since the defendant failed to pay the said sum within the time stipulated under sub-ss (4) and (5A) of s 103 of the Income Tax Act 1967 ('the Act'), the plaintiff claims a further increase in the amount due and payable by 10% and 5% as provided for in the same subsections. The total amount which the plaintiff now claims as due and payable by the defendant is the sum of RM510,913.53. The plaintiff also claims interest of 8% per annum from the date of judgment to the date of realization and costs.

Defence and counterclaim

The defendant filed his defence and counterclaim on 21 February 1991 which was followed by the plaintiff's reply and defence to the counterclaim. However the plaintiff's reply and defence to counterclaim was only filed on 23 August 1991 after having obtained the court order for extension of time to file the same.

Enclosure 11A: Order 14 application

On 26 August 1991 the plaintiff made an application under O 14 of the Rules of the High Court 1980 ('the RHC 1980') for leave of this court to enter final judgment against the defendant for the total sum claimed. This application was supported by the affidavit of Mohamad Arsad bin Haji Said, a tax examiner attached to the Kuantan branch of the Department of Inland Revenue affirmed on 26 August 1991. In his affidavit, Mohamad Arsad alleged that the defendant had been duly served with all the notices of assessment through Messrs Coopers & Lybrand Taxation Services which was duly appointed by the defendant as his tax agent as evidenced by his letter (exh MAHS10). The plaintiff, vide the affidavit of Mohamad Arsad, alleged that the notices of assessment for the relevant years had not been returned to the department undelivered and therefore by virtue of s 145(2) of the Act they are deemed to have been received by the defendant. If the defendant was dissatisfied with the assessment the defendant was given the right of appeal under s 99 of the Act. However, the plaintiff contended that by virtue of s 103(1) of the Act, the assessed tax becomes due and payable as soon as the notice of assessment is served on the taxpayer, notwithstanding any appeal against the said assessment. Further, the plaintiff contended that by virtue of s 106(3) of the Act, the court should not entertain any plea that the tax sought to be recovered is excessive or incorrectly assessed under appeal or incorrectly increased under s 103(4), (5) or (5A) of the Act. The plaintiff also relied on the provisions of s 142(2) of the Act which provides that in a suit under s 106, the production of a certificate signed by the director general giving the name and address of the defendant and the amount of the tax due from him shall be sufficient evidence of the amount so due and sufficient

authority for the court to give judgment for that amount; and such a certificate is attached to the affidavit of Mohamad Arsad as exh MAHS13 (This power of the director general is exercisable by an assistant director of inland revenue under s 136(4) of the Act.) On the above premises the plaintiff contended that there was no defence to the plaintiff's claim and that the defence filed was merely to delay the payment of tax.

The defendant put in a lengthy affidavit in reply, objecting to the plaintiff's application on a number of grounds. The first objection raised by the defendant is the delay on the part of the plaintiff in making this application which was filed some six months after the defendant filed his defence. The defendant contended that the plaintiff had not anywhere in the affidavit in support of this application, given any explanation for the said delay. This, the defendant submitted, is fatal to the plaintiff's application.

It is not in dispute that there was in fact a lapse of six months between the time the defendant filed his defence and the time this application was made. The issue however is whether the delay may be considered inordinate or unreasonable, so as to bar the plaintiff from making this application. This I think would depend on the circumstances of each case. In this case, after the defendant filed in his defence and counterclaim, the plaintiff did not file its reply and defence to the counterclaim until 23 August 1991, ie after having obtained the court's order for extension of time to file the same. This application was filed on 26 August 1991, 6 months and 18 days after the entry of appearance. From the events that had taken place this is not the case where there had been no action taken during the six-month period or so. An application for extension of time was filed by the plaintiff and after having obtained the said extension of time, the plaintiff forthwith filed its reply and defence to the counterclaim and three days later the plaintiff filed this application. No explanation was given by the plaintiff for the delay. The question is, should this failure on the part of the plaintiff to proffer an explanation for the delay lead to the dismissal of this application. The law on this point is that delay per se is only one of the factors to be considered in an application under O14 but delay on its own can never form the basis of a dismissal of such an application. In this case there had been interlocutory steps taken by the plaintiff during the period of the delay and this coupled with the fact that there had been no allegation of any prejudice to have been done to the defendant, the delay alone would not warrant the dismissal of the plaintiff's application. The above proposition of law found support in the case of *First Malaysia Finance Bhd v Yeow Bon Chong* (Civil Suit No C 7956 (1985) High Court, Kuala Lumpur (unreported)). In *Comptroller-General of Inland Revenue, Malaysia v Weng Lok Mining Co Ltd* [1969] 2 MLJ 98, Raja Azlan Shah J (as he then was) held that a delay of three months by the plaintiff in making the application for O 14 was not inordinate and did not warrant a dismissal of the application. In view of what I am going to say on the question of merits, I hold that the delay of six months in the circumstances of this case should not hamper the plaintiff's entitlement to a summary judgment.

On the merits the defendant submitted that there were a number of triable issues that ought to go for trial, namely:

(1) whether the notices of assessment were properly served on the defendant;

(2) whether part of the plaintiff's claim is time-barred;

(3) whether these additional assessments refer to race betting income and as such are not taxable;

(4) whether the assessments were illegal, wrongful and an abuse of the plaintiff's power and were malicious and done in bad faith; and

(5) whether there was agreement for the settlement of the sum due and payable between the plaintiff and the defendant.

Let me deal firstly with the question of whether the notices of assessment were properly served on the defendant. As it appears in the notices of assessment annexed to the affidavit of Mohamad Arsad bin Haji Said in support of this application, the notices of assessment were all addressed to c/o Messrs Coopers & Lybrand Taxation Services Sdn Bhd, PO Box 234, 25720 Kuantan. The defendant contended that the notices of assessment should properly be served on Messrs Coopers & Lybrand of 1st Floor, Hock Bee Building, Jalan Besar, Kuantan as stated in his letter (exh MAHS10). On that basis he contended that he had not been properly served with the notices of assessment as required by s 105(2)(c) of the Act which states that in the case of an individual, the notice of assessment must be sent to his last known address. I think the defendant is trying to confuse the issue here because in the first place it was the defendant who instructed the plaintiff vide letter (exh MAHS10) to forward all returns, notices and correspondence to Messrs Coopers & Lybrand as his tax agent. It is true that the defendant referred to Messrs Coopers & Lybrand, 1st Floor, Hock Bee Building, Jalan Besar, Kuantan in his letter (exh MAHS10), not Messrs Coopers & Lybrand Taxation Services to which the notices of assessment were addressed. However, the defendant never at any stage informed the plaintiff that the address used by the plaintiff was wrong or that the notices were sent to the wrong party. The defendant instead appealed against the assessment to special commissioners under s 99 of the Act. The defendant or his tax agent in the circumstances must have been served with the notices of assessment, otherwise how could the defendant appeal against the same. I therefore hold that it is not open to the defendant to say that he had not been properly served with the notices of assessment. This is nothing more than an attempt on the part of the defendant to confuse the issue in order to defeat the plaintiff's application. In fact, the defendant had never denied receipt of the notices of assessment. He merely alleged that Messrs Coopers & Lybrand Taxation Services Sdn Bhd is a different entity from Messrs Coopers & Lybrand which is a partnership. On the above premises, I hold that the defendant's contention here in is devoid of any merit.

As for the issues raised in (2), (3) and (4) above, for convenience, they may be dealt with together. On the issue of limitation the answer may be obtained from the judgment of the Federal Court in the case of

Kerajaan Malaysia v Dato' Hj Ghani Gilong [1995] 2 MLJ 119. In that case, Edgar Joseph Jr, FCJ after considering the decision of Gill CJ in *NTS Arumugam Pillai v Goverment of Malaysia* [1976] 2 MLJ 72, came to the following conclusion at p 127:

> In our view, the High Court has *no power* to entertain a plea of limitation under s 91(1) and (3) of the Act advanced by a taxpayer. However the special commissioners have such power. Our reasons for these conclusions now follow.
>
> If counsel for the taxpayer were correct in his contention that the plea of limitation based on s 91(1) and (3) of the Act is available to him in proceedings for recovery of tax brought in court as well as in proceedings before the special commissioners, then a decision by the High Court on the question of limitation would prevent the special commissioners from deciding the same question as they would regard themselves as bound by the decision of the High Court, thereby abdicating their fact-finding function of determining whether there has been fraud or wilful default within the meaning of s 91(3)(a) of the Act. Alternatively, even if the special commissioners do not regard themselves as so bound, it could lead to inconsistent decisions by the High Court and the special commissioners on the identical question of limitation. These would not be reasonable results and, what is unreasonable, cannot be the law.

In my view that completely answers the question of limitation raised by the defendant.

In relation to the other two issues, the short answer to them is that these issues similarly could only be raised before the special commissioners and not before the court in an application for summary judgment under O 14 of the RHC 1980. The law is clear that once an assessment is made, the Inland Revenue Department can invoke ss 103 and 106 of the Act which make the tax payable under the assessment due and payable at the place specified in the notice of assessment upon service on the taxpayer of the notice whether or not the taxpayer appeals against the assessment. The taxes so due and payable may be recovered by the government by civil proceedings as a debt due to the government. Under s 106(3), the court is debarred from entertaining any plea which claims that the amount of taxes sought to be recovered is excessive, incorrectly assessed under appeal or incorrectly increased under s 103(4), (5) or (5A). By s 142 a certificate signed by the director general, which includes, the deputy director general, assistant director general, senior assistant director and assistant director, giving the name and address of the defendant and the amount of tax due from him shall be sufficient evidence of the amount so due and sufficient authority for the court to give judgment for that amount. Such a certificate is exhibited herein as exh MAHS13. If I may cite the words of Choor Singh J in *Comptroller of Income Tax v A Company Ltd* [1966] 2 MLJ 282 where he said:

> A taxpayer has no right to by-pass theBoard of Review and take his complaint direct to Court. And when the Comptroller Of Income Tax sues a taxpayer to recover tax due under a notice of assessment, the.taxpayer cannot be heard to say that the assessment on which tax has been levied was not made in accordance with the provisions of the ordinance. Such a complaint must

A in the first instance be land before the Board of Review. The provisions of Order XIV of the Rules of the Supreme Court must be read together with the provisions of the Income Tax Ordinance. If this is not done, every unwilling taxpayer will refuse to pay tax and when sued in Court, will challenge the merits of the assessment, thus causing considerable delay in the collection of the tax. The proper course for every aggrieved taxpayer is B to pay his tax and present his argument against the assessment made upon him before the Board of Review.

It is to be noted that the board of review is the equivalent of the special commissioners under the Act.

On the last issue raised by the respondent, ie that there had been an C agreement reached between the parties for payment by instalment of the arrears of tax, I hold that this could not stand in the face of the certificate issued under s 142 of the Act. The said certificate is expressly provided to be sufficient evidence of the amount of taxes due from the defendant and gives the court sufficient authority to give judgment for the amount. The intention of the legislature is clearly to overcome any plea by any taxpayer D as is now raised by the defendant herein in order to delay the payment of the tax. For the court to entertain such a plea would be to go against the express words of the Act. On the above premises I therefore grant an order in terms of the plaintiff's prayers in encl 11A.

E *Enclosure 59A: Application for striking off*

By summons in chambers, the plaintiff applies to have the counterclaim by the defendant struck off on the ground that it is contrary to O 73 r 4 (1) of the RHC 1980 which provides that:

4(1) Nothwithstanding O 15 r 2 and O 18 rr 17 and 18, a person may not F in any proceedings by the government make any counterclaim or plead a set-off if the proceedings are for the recovery of, or the counterclaim or set off arises out of a right or claim to repayment in respect of, any taxes, duties or penalties.

The said O 73 r 4(1) was made pursuant to the provisions of s 42(2)(e)(i) of the Government Proceedings Act 1956 which read as follows: G

42 Rules of court.

(2) Provision shall be made by rules of court with respect to the following matters:

(e) for providing:

H (i) that a person shall not be entitled to avail himself of any set-off or counterclaim in any proceedings by the Government for the recovery of taxes, duties or penalties ... .

The claim by the plaintiff in this case is beyond dispute, ie a claim in respect of taxes due and payable by the defendant and as such it falls I squarely within the ambit of O 73 r 4(1) of the RHC 1980. On that premise I, therefore, allow the plaintiff's application as per encl 59A with costs.

Enclosure 30A: Appeal against the registrar's decision

Finally I also agree with the plaintiff's submission that in the event I were to grant an order in terms of encl 59A, which I just did, therefore, the defendant's appeal against the registrar's decision as per encl 30A is no longer relevant and accordingly I make no order as regards encl 30A.

Claim allowed.

Reported by Kanesh Sundrum